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BEFORE THE ARIZONA CORPORATION
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Arizona Corporation Commission

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IN THE MATTER OF DISSEMINATION OF
INDIVIDUAL CUSTOMER PROPRIETARY
NETWORK INFORMATION BY TELECOM-
MUNICATIONS CARRIERS

Docket No. RT-00000J-02-0066

Cox Arizona Telcom's Initial Comments on Draft CPNI Rules

Cox Arizona Telcom, L.L.C. (Cox) submits its initial comments on the draft CPNI rules circulated by Commission Staff on April 2, 2004. Cox appreciates this opportunity to submit comments early in the rulemaking process. Cox also urges the Commission Staff to conduct a workshop for all interested parties to discuss the draft rules and submitted comments.

A. Allow Both Opt-In and Opt-Out Procedures

As an initial matter, Cox urges the Commission to adopt CPNI rules that allow either Opt-In or Opt-Out procedures for obtaining customer permission to disseminate CPNI. Presently, the legal landscape presents substantial hurdles for adopting an "Opt-In only" scheme. *See U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999); *Verizon Northwest, Inc. v. Showalter*, 282 F.Supp. 2d 1187, 1194-95 (W.D. Wash. 2003) (enjoining enforcement of WUTC's CPNI rules). By providing both procedures, the Commission eliminates any legal challenge based on an "Opt-in only" approach – a challenge that has been successful in similar situations involving "Opt-in only" rules. Although Staff has suggested that it believes the record may be sufficient to support an "Opt-in only" approach under the *Central Hudson* test, the courts have set a very high bar for states attempting to prove that CPNI rules are "no more extensive than necessary to serve the stated interests" for the rules. Avoiding the "Opt-in only" hurdle will help to allow CPNI rules to take effect promptly without as substantial a risk of being challenged or overturned.

1 **B. Strive for Uniformity with FCC Rules**

2 Cox further urges the Commission to adopt rules that closely track the current FCC CPNI
3 rules, 47 CFR § 64.2001 *et seq.*, in order to provide rules that are as uniform as possible on a
4 national basis. Many telecommunications companies operate in multiple states and relative
5 uniformity in regulation assists such companies with more effective compliance. For example,
6 Cox has expended substantial resources to implement procedures that conform to the requirements
7 of the FCC rules. Cox also has on-going training programs (and annual refresher courses) to
8 ensure that customer CPNI is properly controlled. Any state CPNI rules that are significantly
9 different will increase costs and provide greater difficulty in quality control over the handling of
10 CPNI due to the differences in regulatory schemes. Uniformity provides efficiency in both
11 compliance and costs, both of which benefit the customer.

12 Cox also submits that there is no need to significantly deviate from the FCC CPNI rules.
13 Cox is unaware of any problems in its handling of CPNI under the FCC rules. Cox believes that
14 its communications with its customers concerning the use of CPNI and is clear and effective.
15 Therefore, among the three draft sets of rules circulated by Commission Staff, Cox prefers the
16 third version described as "FCC plus Verification." Given the early stage of the rulemaking, Cox
17 will provide specific comment only on that set of rules (although some of its comments may be
18 equally applicable to the other two sets of rules).

19 **C. Specific Comments on Third Set of Rules (FCC plus Verification)**

20 **Rule xx03:** Subsection B of this Rule appears to require written notice to a customer in
21 *every* instance that the customer approves use of CPNI. This requirement conflicts with – and
22 effectively eliminates – FCC Rule 64.2008(f), which provides special notice requirements specific
23 to one-time use of CPNI. Rule 64.2008(f) specifically allows *verbal* approval for the use of CPNI
24 in certain circumstances involving inbound or outbound telephone contacts to CSRs. Moreover,
25 even if it was Staff's intent to allow verbal approval similar to the FCC rule, Rule xx09.A arguably
26 requires a written confirmation of that one-time use Opt-in approval and Rule xx09.B requires an
27 additional 30 day waiting period, even though the CPNI needed to be used immediately at the

1 customer's request. That confirmation would be unnecessary, burdensome and confusing to the
2 customer.

3 The availability of a limited verbal approval for the use of CPNI is very important to Cox
4 in the operations of its telecommunications and affiliated businesses. Cox CSRs are instructed to
5 request permission to look at and use the customer's CPNI each time the customer calls with an
6 inquiry that indicates that such access is necessary to respond to the customer's inquiry. For
7 example, if a customer is interested in Cox High-Speed Internet service and is currently a
8 "telephone-only" customer with Cox, the CSR would need to access the customer's telephone
9 account and potentially use CPNI to determine how to best meet the customer's need. If this
10 access could not be obtained immediately during that contact, the customer would be confused and
11 frustrated. Cox also would be harmed by the inability to complete the purchase transaction with
12 that customer in real-time. Customers expect that service providers will have access to their
13 current account information when they call, even if the call is to inquire about an affiliate's service
14 to which they do not currently subscribe. Therefore, Cox requests that the Arizona CPNI rules
15 include a provision for a verbal approval for one-time use of CPNI similar to the FCC Rule
16 64.2008(f).

17 Finally, Subsection C is overbroad. At a minimum, proprietary agreements should only be
18 required if CPNI is actually going to be provided to other entities. As written, Subsection C
19 requires an agreement regardless of whether CPNI will be provided. It is also inconsistent with
20 Rule xx08.C, which does contemplate a proprietary agreement only if CPNI is going to be
21 released.

22 **Rule xx04:** Subsection A.3 requires twelve-point or larger print. Cox requests that the
23 Rule be modified to match the FCC requirement in 64.2008(c)(5), which provides some flexibility
24 but still requires the type to be "sufficiently large."

25 **Rule xx05:** Subsection B requires written confirmation to the customer of the result of the
26 Opt-out process within 60 days after implementation of the Opt-out process. First, it is unclear
27 whether CPNI could be used prior to the mailing of that notice if the Opt-out window is shorter

1 than 60 days (FCC Rule 64.2008(d)(1) requires only 30 days notice). That ambiguity should be
2 clarified.

3 Second, that requirement is unduly burdensome. Rule xx07 requires monthly notice on
4 customer bills of the CPNI treatment statement status, which effectively duplicates that notice.
5 Cox also provides annual notice of privacy rights and could incorporate the notice in that mailing.
6 Having an annual date eliminates the inefficiency and additional cost of "rolling" dates depending
7 on when a new customer starts service.

8 Third, there should be a provision that allows confirmation by email in lieu of mailing if
9 the customer has agreed to email communications concerning its account.

10 **Rule xx06:** Subsection A of this Rule is confusing. It appears to contemplate obtaining
11 some sort of affirmative verification from the customer before using CPNI *even though* the Opt-
12 out procedure was used. If such verification is required for all Opt-out authorizations, that results
13 in a de facto Opt-in procedure. The confusion is exacerbated by Subsection A.2 which allows use
14 of CPNI if the telecommunications company uses the Rule xx04/xx05 procedure which does not
15 include any verification. Moreover, Subsections A.1, A.3 and A.4 are not clearly related to any
16 sort of Opt-out procedure in that they effectively require an affirmative Opt-in by the customer.
17 Unless Subsection A is both clarified and limited to Subsection A.2, this version of CPNI rules
18 may be subject to challenge on a basis similar to the challenges in *U.S. West, Inc. v. FCC* or
19 *Verizon Northwest, Inc. v. Showalter* because it effectively eliminates a true Opt-out procedure.

20 **Rule xx07:** Cox believes that a monthly reminder of CPNI status on a bill may create
21 more confusion than benefit for customers. For example, customers may wonder why they are
22 being provided information about CPNI when they have not done anything to change the CPNI
23 status. Repeat notice does not narrowly serve the public interest of ensuring proper use of CPNI.
24 Cox requests that any requirement for reminders be done on an annual basis in conjunction with a
25 complete statement about privacy policies and customer options concerning CPNI. Cox currently
26 provides such a notice and has found that method to be effective. Cox has experienced no
27 significant problems concerning use of CPNI through this method of providing a reminder.

1 Rule xx07 should also include an email option for reminders if the customer has agreed to
2 receive email communications about its account.

3 **Rule xx08:** Cox believes that entering into proprietary agreements with its own affiliates
4 is unnecessary. Cox also believes that an Opt-out procedure should be acceptable for
5 dissemination to affiliates or, at a minimum, affiliates that provided telecommunications-related
6 services, consistent with current FCC rules. Subsection B appears to prohibit such use of the Opt-
7 out procedure in such contexts and Cox submits that limitation is not narrowly tailored to serve the
8 state's interest.

9 **Rule xx09:** The ten day confirmation notice and the subsequent 30 day waiting period
10 present circumstances where that 40 day delay in the use of CPNI precludes a customer from
11 receiving notice about promotional offerings or other beneficial information. Cox submits that a
12 shorter period will still serve the state's interest.

13 **Rule xx11:** The 120 day period is a substantial time to remain in limbo over a waiver
14 request, particularly given the opportunity to further suspend the application at the end of that
15 waiting period. Cox requests that the initial period to suspend, approve or reject a waiver
16 application be set at 30 days.


17 **D. Conclusion**

18 Cox's initial comments are intended to identify significant issues regarding the draft rules
19 rather than focus on revisions to specific rule language. Cox intends to participate in any
20 workshops to address the draft rules and urges the Commission to focus those workshops initially
21 on the "big picture" issues.
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